

Burns, Marlene

From: Brandt, Kim
Sent: Thursday, April 18, 2013 10:42 AM
To: Burns, Marlene; Murillo, Jaime; Whelan, Melinda; Campbell, James
Subject: FW: City of Newport Beach draft Housing Element
Attachments: 2013-04-17 Newport Beach - Inclusionary Zoning.pdf

Please distribute to the PC.

Kim

From: Mike Balsamo [<mailto:MBalsamo@biaoc.com>]
Sent: Thursday, April 18, 2013 10:35 AM
To: Brandt, Kim
Cc: Victor Cao
Subject: FW: City of Newport Beach draft Housing Element

Kim –

Please find our letter attached. We will see you this evening. Thank you.

Mike Balsamo
Chief Executive Officer
BIASC Orange County Chapter
17744 Sky Park Circle, Ste 170
Irvine, CA 92614
949-553-9500 ext. 112
949-769-8943 fax
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April 18, 2013

Chairman Michael Toerge
Planning Commission
City of Newport Beach
100 Civic Center
Irvine, CA 92606-5207

Re: Request for Removal of Inclusionary Housing Mandate and In-Lieu Fee as part of the 2013 Housing Element Update

Dear Chairman Toerge,

On behalf of our membership, we would like to thank city staff for their invitation to the 2013 Housing Element meetings. After careful review of the proposed housing element update, **we request the removal of the inclusionary housing mandate and propose a voluntary program as an alternative.**

The Building Industry Association of Southern California, Orange County Chapter (BIA/OC) is a non-profit trade association of nearly 1,000 companies employing over 100,000 people affiliated with the home building industry. The Orange County Chapter represents the largest member base within BIA Southern California. Our mission is to champion housing as the foundation of vibrant and sustainable communities.

We recommend the elimination of the inclusionary housing mandate and in-lieu fee based on the following seven points:

1. **The City of Newport Beach is Within its Rights to the Eliminate Inclusionary Zoning Mandate** – Multiple letters from the Department of Housing and Urban Development indicate that inclusionary housing mandates are *not a requirement* for the approval of a jurisdiction's housing element. State law does require jurisdictions to provide incentives for voluntary affordable housing development. Many inclusionary zoning advocates mistakenly cite Regional Housing Needs Allocation (RHNA) reports as a requirement for the production of inclusionary housing. RHNA is a tool for cities to plan effectively for population growth. The City has a reasonable allocation considering that the current goal is just 5 units necessary for future population growth.
2. **Inclusionary Zoning Fee was Adopted During Peak Market and Increased During the Recession** – The inclusionary zoning fee was adopted during the peak of the housing market in 2006. In-lieu funds are not a dependable source of revenue when affordable housing is most needed during economic downturns such as the one we are currently recovering from. Under this policy, the production and/or the fee for inclusionary housing is only feasible during active housing production. In time, an inclusionary housing mandate becomes an unfunded mandate and liability should the City continue the production of subsidized housing. Likewise, the



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CHIEF EXECUTIVE OFFICER
MICHAEL BALSAMO

elimination of redevelopment has only exacerbated the issue of funding affordable housing. Considering that the economic conditions have changed, we believe it is necessary for inclusionary housing policies to change as well.

3. **Inclusionary Housing Mandates are a Barrier to the Actual Production of Affordable Housing**– While there are signs that the housing market is recovering, the recovery is in its infancy and remains fragile. The most recent report on the housing industry from Wells Fargo and the National Association of Homebuilders indicates that homebuilder confidence is poor¹. Inclusionary housing requirements are the cause of a 7% to 10% increase in the cost of market-rate housing. In Newport Beach, the fee is \$20,513 per unit. The in-lieu fee has increased by 10.8% since it was adopted in 2006, despite the fact that most homebuilders and new homebuyers continue to face considerable financial challenges.
4. **Inclusionary Zoning Policies Lack Nexus** - As a matter of public policy, mandatory inclusionary requirements do not meet the same standards that other development impact fees are subject to pursuant to the Mitigation Fee Act². The City's mandatory inclusionary zoning requirements mandate that for every 100 market-rate homes, 15 homes will be sold below market-rates and, in some cases, at a loss. As an example, it is readily apparent how residents may proportionally impact traffic or park service levels. On the contrary, there is no direct impact relationship to show that the production of new residential housing causes a reduction in affordability. In fact, mandatory policies artificially increase the cost of market-rate housing. Currently, homebuilders and indirectly new residents are singled-out to fund affordable housing projects. Should the City have a legitimate interest in subsidizing affordable housing production, we would expect an equitable and broad government response to that goal.
5. **Housing Production is the Key to Affordable Housing** – California is ranked #3 in the nation for the highest housing prices. This is largely due to 1) lack of adequate housing stock, 2) a jobs to housing imbalance in coastal areas, and 3) lack of available land coupled with excessive regulation on the housing industry. Policies that support the production of housing allow for fundamental economic principles of supply and demand to occur.
6. **The City of Newport Beach Maintains Local Control** – Elimination of the mandatory inclusionary requirement in Newport Beach does not prevent the City from negotiating alternative housing solutions with the business community on a case-by-case basis.
7. **BIA Remains Open to Alternative Solutions to Affordable Housing** – BIA has prepared a policy memo to aid jurisdictions implement voluntary affordable housing programs. BIA/OC remains a resource to you and your staff should the City invite the business community to explore reasonable alternatives to mandatory inclusionary housing. BIA/OC's members include non-profit affordable housing developers, policy experts, land-use attorneys, and staff.

The inclusionary zoning requirement is one the most significant issues for our membership because of its negative impact on housing production. We offer our support in forming policies that would benefit the residents of Newport Beach. **For these reasons, we request the consideration of**

¹ Kowalski, Alex. "Homebuilder Confidence in U.S. Unexpectedly Dropped in April." *Bloomberg L.P.* April 15, 2013.

<http://www.bloomberg.com/news/2013-04-15/homebuilder-confidence-in-u-s-unexpectedly-dropped-in-april.html> (accessed April 15, 2013).

² CAL. GOV. CODE Section 66016

removal of the inclusionary zoning mandate and in-lieu fee from the 2013 Housing Element update.

Thank you for your time and thoughtful consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "M. Balsamo", with a stylized, flowing script.

Michael Balsamo
Chief Executive Officer

cc: Planning Commission
Mayor Keith Curry
David Kiff, City Manager
Kimberly Brandt, Community Development Director

Enclosures: Department of Housing and Urban Development Letter

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
OFFICE OF THE DIRECTOR**

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December 13, 2007

Ms. Kristine E. Thalman
Chief Executive Officer
Building Industry Association of Orange County
17744 Sky Park Circle, Suite 170
Irvine, CA 92614

Dear Ms. Thalman:

Thank you for your recent inquiry regarding inclusionary zoning ordinances. The Department is pleased to provide information on the requirements of State law and Department policy. In particular, you requested clarification on whether State housing element or other law requires the adoption of local inclusionary ordinances. **In short, neither State law nor Department policy requires the adoption of any local inclusionary ordinance in order to secure approval of a jurisdiction's housing element. State law does require incentives for voluntary inclusionary development (State density bonus law), pronounces housing element law neutral relative to enactment of mandatory local inclusionary provisions, and circumscribes the responsibilities of local governments which do enact inclusionary policies. The relevant sections of the Government Code are described below.**

Government Code Section 65915-17, State density bonus law, requires local governments to make incentives available to residential developers that voluntarily propose to reserve specified portions of a proposed development for occupancy by low- or moderate-income households, and indicates that local governments are not to undermine implementation of this provision. Every local government is required to adopt an ordinance establishing how it will implement State density bonus law, including setting forth the incentives the local government will provide.

State housing element law requires jurisdictions to plan for their existing and projected housing needs, identify adequate sites to accommodate their share of the regional housing need, and, among other things, analyze local policies, regulations or requirements that have the potential to constrain the development, maintenance or improvement of housing for all income level. The law also requires programs to "assist in the development of adequate housing to meet the needs of low- and moderate-income households".

Many local governments adopt mandatory inclusionary programs as one component of a comprehensive affordable housing strategy and have demonstrated success in increasing the supply of housing affordable to low- and moderate-income households. However, some inclusionary programs may have the potential to negatively impact the overall development of housing. As a result, local governments must analyze mandatory inclusionary policies as potential governmental constraints on housing production when adopting or updating their housing elements, in the same way that other land-use regulations must be evaluated as potential constraints.

For example, local governments must analyze whether inclusionary programs result in cost shifting where the cost of subsidizing the affordable units is underwritten by the purchasers of market-rate units in the form of higher prices. Such increases can be a barrier to some potential homebuyers who already struggle to qualify for a mortgage, and earn too much to qualify for government assistance. Local governments must also analyze their inclusionary policies to evaluate whether sufficient regulatory and financial incentives are offered to facilitate compliance with the requirements.

In addition, it is important to note that the adoption of mandatory inclusionary zoning programs do not address housing element adequate sites requirements to accommodate the regional housing need for lower-income households. Inclusionary programs are not a substitute for designating sufficient sites with appropriate zoning, densities and development standards as required by Government Code Section 65583(c)(1).

Finally, Government Code Section 65589.8 specifies that nothing in housing element law shall be construed to expand or contract the authority of a local government to adopt an ordinance, charter amendment, or policy requiring that any housing development contain a fixed percentage of affordable housing units. It further states that a local government which adopts such a requirement shall permit a developer to satisfy all or a portion of that requirement by constructing rental housing at affordable monthly rents, as determined by the local government.

California has been for many years in the midst of a severe housing crisis; there are simply not enough homes for the number of residents who need them. Continued undersupply of housing threatens the State's economic recovery, its environment, and the quality of life for all residents. Effectively addressing this crisis demands the involvement and cooperation of all levels of government and the private sector. Both the public and private sector must reexamine existing policies, programs and develop new strategies to ensure they operate most effectively and provide an adequate housing supply for all Californians. The Department is committed to working with its public and private sector partners in this effort for the benefit of California's growing population.

Ms. Kristine E. Thalman
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I hope this responds to your inquiry. If you need additional information, please call me at (916) 445-4775 or Cathy Creswell, Deputy Director, Division of Housing Policy Development, at (916) 323-3177.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn L. Jacobs". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Lynn L. Jacobs
Director